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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/770,558	01/26/2001	Julian Satran	6727/01226	6418
7590	05/04/2006		EXAMINER	
S. Peter Ludwig Darby & Darby P.C. 805 Third Avenue New York, NY 10022				LEZAK, ARRIENNE M
		ART UNIT		PAPER NUMBER
		2143		

DATE MAILED: 05/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/770,558	SATRAN ET AL.
	Examiner	Art Unit
	Arrienne M. Lezak	2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-3,5,6,8-12,14-21,23-26,28-33,35,36,38-42 and 44-48 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3,5,6,8-12,14-21,23-26,28-33,35,36,38-42 and 44-48 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

1. Examiner notes that Claims 1, 2, 8, 16, 17, 23, 31, 32 & 38 have been amended, Claims 46-48 have been added and Claims 4, 7, 13, 19, 22, 27, 34, 37 & 43 have been cancelled. Claims not explicitly addressed herein are found to be addressed within prior Office Action dated 15 December 2005 as reiterated herein below.

### ***Claim Rejections - 35 USC § 112***

2. Claims 1 & 13 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has amended Claims 1 and cancelled Claim 13, thereby overcoming rejection of the same under 35 U.S.C. 112, second paragraph, and thus rejection under 35 U.S.C. 112, second paragraph, is hereby withdrawn.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 5, 6, 8-12, 14-21, 23-26, 28-33, 35, 36, 38-42 & 44-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over extensive consideration of US Patent US 6,718,361 B1 to Basani in view of US Patent US 6,684,331 B1 to Srivastava.

5. Regarding Claims 1, 16 & 31, Basani discloses a system, method and computer-readable medium for transmitting data over a communications network, (Abstract; Fig. 1; & Claims 1-24), comprising the steps of:

- receiving at a first server, content from a content provider in a cache server, (Col. 4, lines 60-67; Cols. 5-8; & Col. 9, lines 1-53 – particularly Col. 5, lines 12-14 & Col. 8, lines 20-27);
- responsive to the receipt of said content, establishing a first group directory in a cache [distribution server], (Fig. 1; Col. 5, lines 14-56; Col. 8, lines 21-67; & Col. 9, lines 1-53); and
- transmitting said first group directory from said cache on a data channel to a subsidiary cache(s) [the group leaders], (Fig. 1 & Col. 6, lines 36-43);
- establishing a second group directory [of the backend servers] in said [group leader] subsidiary cache, said second group directory being derived from said first group directory, (Col. 6, lines 18-34; Col. 7, lines 15-19; & Col. 9, lines 14-53), (Examiner notes that Basani clearly teaches the division and distribution of content per group wherein it would have been obvious to establish secondary group directories per group leader for distribution of content to backend server supporting individuals or areas having similar interests or needs, wherein distribution by content-type

would reduce the amount of unwanted/unneeded content sent, thereby reducing network traffic and configuration-related errors, (Col. 7, lines 15-19))

- reorganizing said second group directory independently of said first group directory, (assignment messages - Col. 5, lines 57-67 & Col. 6, lines 1-47).

6. Though Basani clearly teaches a hierarchical data distribution system, wherein the obvious endpoints are the multicast group receivers, (Col. 3, lines 44-46), Examiner additionally provides the Srivastava reference which clearly enumerates a tree-like distribution comprising a root node, intermediate nodes and leaf nodes within a multicast hierarchy, (Srivastava - Fig. 10A & Col. 19, lines 37-54), wherein transmitting said second group directory from said subsidiary cache [GL or BES] to a multicast group of receivers [BES or endpoint] would have been an obvious as a means for providing efficient controls for triggering distribution of digitized data content to selected groups of a large number of remote computer servers, (Basani – Col. 4, lines 63-66). Thus, Claims 1, 16 & 31 are found to be unpatentable over the combined teachings of Basani and Srivastava.

7. Regarding Claims 2, 8, 17, 23, 32 & 38, the combined teachings of Basani and Srivastava are relied upon as noted herein. Basani further teaches a step of transmitting said first group directory, (and second group directory – per pending claims 8, 23 & 38), is performed using a REMADE protocol, (Col. 3, lines 11-24; Col. 6, lines 19-27; Col. 7, lines 15-19; & Col. 17, lines 1-67; & Col. 18, lines 1-19), wherein said first group directory and said second group directory comprise data items that are divided

into blocks that include a block sequence number, a data item identifier, and a timestamp indicating an age of a respective data item, (Examiner notes that Basani clearly teaches multicasting divided data to subsets of receivers, which receivers have made a determination as whether or not to receive said data. Additionally, Examiner finds that data items divided and labeled by sequence number, data identifier and timestamp were well-known in the art at the time of invention by Applicant for purposes of aiding in delay, jitter and lost packet problems – please see the Anandakumar reference cited herein below as art not relied upon). Thus, Claims 2, 8, 17, 23, 32 & 38 are found to be unpatentable over the combined teachings of Basani and Srivastava.

8. Regarding Claims 3, 6, 18, 21, 33, & 36, the combined teachings of Basani and Srivastava are relied upon as noted herein. Basani further teaches the step of transmitting said first group directory, (and second group directory – per pending claims 6, 21 & 36), is performed by periodic transmission thereof, (Col. 7, lines 45-48 & Col. 19, lines 6-64). Thus, Claims 3, 6, 18, 21, 33, & 36 are found to be unpatentable over the combined teachings of Basani and Srivastava.

9. Regarding Claims 5, 9, 20, 24, 35 & 39, the combined teachings of Basani and Srivastava are relied upon as noted herein. Basani further teaches the step of transmitting said first group directory, (and second group directory – per pending claims 9, 24 & 39) is performed according to a policy of said content provider, (Col. 5, lines 12-32). Thus, Claims 5, 9, 20, 24, 35 & 39 are found to be unpatentable over the combined teachings of Basani and Srivastava.

10. Regarding Claims 10, 25 & 40, the combined teachings of Basani and Srivastava are relied upon as noted herein. Basani further teaches wherein said content provider comprises a plurality of content providers, (Col. 5, lines 12-32). Thus, Claims 10, 25 & 40 are found to be unpatentable over the combined teachings of Basani and Srivastava.

11. Regarding Claims 11, 26 & 41, the combined teachings of Basani and Srivastava are relied upon as noted herein. Basani further teaches wherein said subsidiary cache comprises plurality subsidiary caches, (Figs. 1 & 6; Col. 16, lines 30-67). Thus, Claims 11, 26 & 41 are found to be unpatentable over the combined teachings of Basani and Srivastava.

12. Regarding Claims 12, 28 & 42, the combined teachings of Basani and Srivastava are relied upon as noted herein. Basani further teaches wherein said cache and said subsidiary caches are linked together as a hierarchical tree, said cache forming a root said hierarchical tree, (Figs. 1, 6 & 7). Thus, Claims 12, 28 & 42 are found to be unpatentable over the combined teachings of Basani and Srivastava.

13. Regarding Claims 14, 15, 29, 30, 44 & 45, the combined teachings of Basani and Srivastava are relied upon as noted herein. Basani further teaches wherein said first group directory, (and second group directory – per pending Claims 15, 30 & 45) comprise root directory hierarchically linked to plurality of subdirectories, said subdirectories carrying list data items, a sub-tree of said first group directory being defined by one of said subdirectories and at least one linked subdirectory there under, (Figs. 1 & 6; Col. 16, lines 30-67; Col. 17; & Col. 18, lines 1-19). Thus, Claims 14, 15,

29, 30, 44 & 45 are found to be unpatentable over the combined teachings of Basani and Srivastava.

14. Regarding Claims 46-48, the combined teachings of Basani and Srivastava are relied upon as noted herein. Basani further teaches wherein the step of transmitting said first group directory is performed without receiving communications from any receivers of said content, (Col. 6, lines 12-47), (Examiner notes that the BES automatically receives the data from the GL without any prior communication concerning the same. Additionally, Examiner notes that a multicast "push" architecture was well-known at the time of invention by Applicant for purposes of real-time transmission of audio and video data— please see the Deshpande reference cited herein below as art not relied upon). Thus, Claims 46-48 are found to be unpatentable over the combined teachings of Basani and Srivastava.

### ***Response to Arguments***

15. Applicant's arguments filed 10 February 2006, have been fully considered but they are not persuasive. Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made.

16. Applicant's arguments regarding the independent reorganization of subsidiary caches as well as data transmission without prior communication from the receiver(s) has been addressed herein above. Thus, as Examiner has addressed Applicant's

Amendment, and has further rejected all Amended, Original and Newly Added Claims, as noted herein above. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

17. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

#### ***Double Patenting***

18. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

19. Claims 1, 2, 31 & 32 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. US 6,507,586 B1 in view of the combined teachings of Basani and Srivastava.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US Patent US 6,801,499 B1 to Anandakumar; and

US Patent US 6,987,728 B2 to Deshpande.

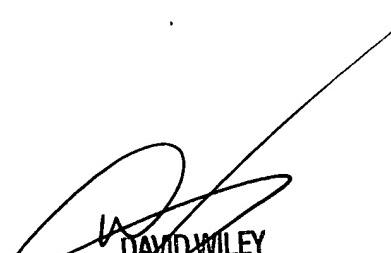
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arrienne M. Lezak whose telephone number is (571)-272-3916. The examiner can normally be reached on M-F 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571)-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Arrienne M. Lezak  
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Art Unit 2143

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